

9th February 1924]

APPOINTMENT OF PERSONS ABOVE 60 YEARS OF AGE AS PUBLIC
PROSECUTORS

Mr. ABBAS ALI KHAN:—"Sir, Mr. T. N. Bava Ravuttar Sahib in whose name Resolution No. 2 on the agenda stands is absent. May I have the leave of the House to move it?"

The House signified its assent and the hon. the President permitted Mr. Abbas Ali Khan to move the Resolution.

Mr. ABBAS ALI KHAN:—"Sir, the Resolution which I am now permitted to move runs thus:

2. *That this Council recommends to the Government that in future persons aged 60 years or above be not appointed to or continued in the office of public prosecutor.*

"Sir, I am sure it is known to all the Members of this House that there is a rule that all persons in the permanent service of Government must be retired at the age of 55. The only exception that is made is in the case of High Court Judges. I understand that in no other department of Government service is a person continued so long, but it is only in the case of the public prosecutors. In the interests of general policy also it is necessary that people over 60 years old must be required to retire so as to make room for persons more energetic and more qualified for discharging the duties of the public prosecutor. With these few words, I beg to move this Resolution."

Mr. MUHAMMAD MOOSA SAIT seconded the motion.

The hon. Mr. C. P. RAMASWAMI AYYAR:—"Mr. President, Sir, yesterday there was a question put to me as to how many of the Government pleaders and public prosecutors in this Presidency were over 60 years of age. I excused myself from performing the inquisitorial function sought to be imposed upon me, but even when I did so I felt fairly confident that the number of such persons must be extremely limited. For the satisfaction of the hon. the Mover of this Resolution I may say that great pains are taken in regard to this matter when a name comes up for appointment. The procedure may be thus summarised. The Collector and District Magistrate sends up a list of names in consultation with the District Judge, and so far as I have administered the department in my charge, where the Collector and the District Judge combine in the recommendation, I have rarely interfered, in fact never, on the ground that after all it is the Collector and the District Judge who have to get the help of the local public prosecutor, and it will not do for me here sitting in my room to say that their choice of a particular man is wrong. Therefore I have generally not interfered, in fact till now I have never interfered, where the Collector and the District Judge have concurred in their recommendation of a particular person for the post of a public prosecutor or Government pleader. Sometimes it does happen that the Collector and the District Judge do not agree. Then and only in such cases do I consider the matter myself, take the list of applicants and make the best choice I can in the circumstances. That is the way in which the procedure of the appointment of public prosecutors is regulated. Speaking subject to correction I think that there is only one public prosecutor in the Presidency who is over 60 years now. That is, I think, in the

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Ramnad district, and that was a very particular case. In that matter the Collector and the District Judge were both written to. I got a number of petitions stating that the Collector and the District Judge were both recommending a person over 60 years and requesting that I might prevent it. And on that, I asked them to state whether they had bestowed their attention on the matter—Mr. Arokiaswami Pillai was the gentleman concerned—and if he was not considered quite fit for discharging the duties, they would suggest any other gentleman. I got the reply that he had done splendid work and that it was very difficult to get any other person of the same calibre. On that I accepted the joint recommendation of the Collector and the District Judge. However, I may say this, that there is a rule, an undoubted rule that so far as law officers of the Crown in Madras are concerned, excepting the Advocate-General who derives his office from the Crown, the Government pleader, the public prosecutor and all such functionaries must retire at 60, and that is because they have a permanent job, but the public prosecutors referred to in this motion are appointed for a period of three years and at the end of that period, their fitness for the discharge of the duties comes up again for consideration and decision by the Collector, District Judge and Government. I am therefore unable to accept the Resolution as it is worded that there should be an automatic disability imposed. But I may assure this House that it will be my endeavour, as it had been my endeavour, to see to it that the most efficient men are secured, and I may also say, and I trust that the House will support me in so doing, that it is in the highest degree detrimental to the conduct of the very important duties performed by the public prosecutors that when they are found fit for the discharge of their duties and to conduct cases and when both the Judge and the Collector recommend them, I should nullify their joint recommendation."

Mr. S. ARPUDASWAMI UDAYAR :—" Mr. President, Sir, I oppose this motion with all the vehemence I can command. I can understand the reasons which have actuated Government in imposing an age-limit in the case of officers in permanent Government service. For Government officers are expected to do a great deal of touring work. They have to spend a great deal of their time out of headquarters in field work, in inspection work and in doing very many things which require certainly physical fitness, robust health and energy. No such age-bar is enforced in the case of public prosecutors or other class of public workers whose activities are purely intellectual and do not necessitate frequent travelling. This motion is far-reaching; for an attempt is made not only to introduce an age-bar in the case of public prosecutors but also, as the second part of the Resolution says, to recommend that they should not be continued in their office. Sir, if this age-limit had been in operation in all services, I think, in that case, we could not have availed ourselves of the services of the first President of this Council. What I admired most in him was his intellectual keenness and vigour. The strain of a prolonged sitting, of close attention to the discussions regarding Bills and other important matters in this Council, which was found to be very heavy and taxing even by the younger Members of this Council, did not seem to weigh with him at all. Nothing which took place here, not the slightest whisper, not the slightest divergence from the main subject of any motion seemed to escape him. His rulings were prompt and so very just

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and so very eminently reasonable they were that all of us both officials and non-officials willingly and readily submitted to them. The weight of 60 years and more did not prevent that esteemed gentleman from transferring his services to other spheres of life, did not prevent him from leaving his own country and going to England, to London to enter upon the onerous and responsible duties of a Member of the India Council at the India Office. If this rule were in force in all branches of the Public Services, we should not be having the services of many eminent men. And from what the hon. the Law Member told us just now, as regards these public prosecutors, there is only one gentleman, the public prosecutor of Ramnad, Mr. Arokiaswami Pillai, a poor Indian Christian, who will be affected by the adoption of this Resolution. Mr. Arokiaswami Pillai had a brilliant career at Trichinopoly, had an equally brilliant career in Madras for some time as Professor of Philosophy in the Pachiappa's College. He is now practising in Madura, the city from which the hon. Member who has moved this Resolution comes. Sir, that poor man happens to be the only Indian Christian who is a public prosecutor and the very fact that both the Collector and the District Judge of Ramnad recommended him, well aware of the instructions sent out by the hon. the Law Member as one fit for the public prosecutor's place on the ground of the very satisfactory work turned out by him, shows that the man is still in full possession of vigour and energy, and that his intellect is still able to cope with that work which falls ordinarily to the lot of a public prosecutor. I do not know for what reason my friends there want him to be removed from the office. Is it because he is an Indian Christian and stands in the way of others?"

The hon. Mr. C. P. RAMASWAMI AYYAR:—"Sir, I think my hon. Friend will bear in mind that although I mentioned the gentleman's name, the Resolution itself is perfectly general, and I take it that the Mover and supporters have got no one person in view. I think it is due to my hon. Friend who moved the Resolution to say that."

Mr. S. ARPUDASWAMI UDAYAR:—"Well, Sir, I take it that though the Resolution is worded in quite a general way and does not contemplate any particular case, unfortunately, from the explanation given by the hon. the Law Member it so happens that the only public prosecutor who is 60 years old is that poor Indian Christian."

The hon. the PRESIDENT:—"After the explanation given by the hon. the Law Member and seeing that the hon. Member (Mr. S. Arpudaswami Udayar) has dealt sufficiently with this individual case, I think he need not refer to it any more and may confine his remarks to the merits of the motion."

Mr. S. ARPUDASWAMI UDAYAR (*continued*).—"My only intention, Sir, was to say that no real advantage would be derived from pressing this Resolution. There is only one man who will be affected by the passing of this Resolution. That was the object I had in instancing this circumstance. I do not for one moment assert that my hon. Friend who has moved this Resolution has any other but an honourable desire to serve the interests of the country. I will be the very last man to credit him with any sinister purpose. Far from it. Now that the circumstances have been made very clear, and we have the assurance of the hon.

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the Law Member that the appointment is one ceasing every three years and coming on again for reconsideration. I think we may leave it to his discretion that only such men are appointed public prosecutors as have been discharging their duties satisfactorily and as may be recommended by the Collector and District Judge as being quite competent for the work. With these few words, I oppose this Resolution."

Mr. R. VEERIAN :—" Mr. President, I think I am going to have my share and that too, I am very glad, presently. It will be seen from G.O. No. 1390, dated 18th May 1886, as well as G.O. No. 1337 of the year 1890, which deal with the appointment of public prosecutors, that these appointments are made by Government on the nomination of the District Magistrate in consultation with the Sessions Judge. But the Government are not precluded from considering an appointment if they think fit even during the continuance of the period of the appointment. If we go to the bazaar, we select wholesome fruits, but not unwholesome fruits. So also in the case of the selection of public prosecutors, the District Judge may select only capable and clever men from among the members of the bar, but not incapable men. Take the case of Mr. Eardley Norton, who is above 60 years. Can we apply that principle, Sir? I do not think we can, because, in that case, even justice will fail. I think, Sir, discretion is given to the District Magistrate and the Sessions Judge in the matter of nomination and I do not see any reason why we should deprive them of that. It is for them to see whether capable men can be secured or not. My hon. Friend pointed out that in the case of High Court Judges there is restriction of age. That is true, Sir, but High Court Judges are officials and they get their pension after retirement; whereas in the case of public prosecutors they do not get any pension. Their appointment is only for three years and therefore they should be treated differently. With these few words, Sir, I want to oppose this Resolution."

Diwan Bahadur P. KESAVA PILLAI :—" I am tempted to say a few words, Sir, because this figure '60' is put in here. Yes, I am 63 years old. I was sent out by you all to South America. I went there and did the business very well (hear, hear) and I think I am more attentive to and more assiduous in my duties than my hon. Friend, Mr. Abbas Ali (laughter). I do not think that the question of age should be introduced into the case of these advocates. There are any number of advocates in the mufassal who are above 60 and yet they are making a lot of money. But I say this much. In certain places these prosecutorships have been conferred upon certain people as permanent patta"

The hon. Mr. O. P. RAMASWAMI AYYAR :—" Mr. President, as a matter of personal explanation, I may say this. I have made it a rule to call on the District Magistrate to explain the reasons why he recommends any person for a second time."

Diwan Bahadur P. KESAVA PILLAI :—" I am so glad to hear, Sir, that the hon. the Law Member is inaugurating a new and wholesome policy. But I have known in several districts where competent Muhammadan gentlemen and other people could be had, somehow or other they are overlooked. Evidently there is discontent in that group (the Muhammadan group), because no Muhammadans are appointed as public prosecutors.

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I have known competent Muhammadan legal practitioners who could have been given this place and yet, somehow or other, the District Magistrates and the District Judges also”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Again, Sir, as a matter of personal explanation, I propose, having realized the intensity of feeling on this matter, to circularize the District Magistrates with regard to the subject referred to by my hon. Friend.”

Diwan Bahadur P. KESAVA PILLAI :—“ I am very glad, Sir, and the House will be gratified also, to learn that from the hon. the Law Member, and I am sure that he will follow it up vigorously and see that more vigorous people are appointed to these posts. I do not mean people who are vigorous like me (laughter). Some people have been continuing as public prosecutors for decades, creating much discontent among the more capable who are to be found in the local bars. I hope he will carry out his policy and see that some of these fixtures are weeded out and better men put in, and that especially the interests of the Muhammadans—of course Mr. Abbas Ali will be satisfied with that—will be carefully guarded by the hon. the Law Member.”

Rao Bahadur C. NATESA MUDALIYAR :—“ Sir, Mr. President, after the assurance given by the hon. the Law Member, I would request my Friend, Mr. Abbas Ali Khan, to withdraw his Resolution. If my hon. Friend is discontented that Muhammadans are not appointed as public prosecutors, there is a Resolution coming on below that four Muhammadans should be appointed as public prosecutors. I would request the hon. the Law Member to note that that is a real grievance of the Muhammadans and that their proportionate share should be given to them. In fact, they are within the communal limits when they ask for four public prosecutorships, that is, their 15 per cent. So I would request the hon. the Law Member at least to give the matter his favourable consideration, so that my hon. Friend, Mr. Abbas Ali Khan, may withdraw his Resolution.”

Mr. ABBAS ALI KHAN :—“ Mr. President, when I moved my Resolution I had not in view any particular district or particular public prosecutor at all.”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ I am absolutely sure of that. The only point that I was pressing was that, so far as I knew from circumstances which were brought to my knowledge there was one case in which objections were presented to me.”

Mr. ABBAS ALI KHAN :—“ My point is that in this Presidency there is a large number of public prosecutors who are 60 and above. My own experience of the matter is, once a public prosecutor, always a public prosecutor. I challenge the hon. the Law Member to show me one case where a public prosecutor was sent out after three years.”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ I think it was done in two cases.”

Mr. ABBAS ALI KHAN :—“ I have seen public prosecutors of 40 and 56 years of standing.”

Mr. M. RATNASWAMI :—“ What was his age in the last case ? ”

Mr. ABBAS ALI KHAN :—“ He was 76 and he was at Cuddapah.”

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Rai Bahadur T. M. NARASIMHACHARLU :—“ I am not quite sure whether my hon. Friend is right in saying that that gentleman has completed 56 years of service as a public prosecutor.”

Mr. ABBAS ALI KHAN :—“ Before the Public Prosecutors Act came into force, they were known as court inspectors. This gentleman was originally court inspector and then he was appointed public prosecutor and on the whole he has continued there for 56 years. Ever since this Act came into force, the Muhammadans have been denied their share in the Judicial department. It is a distressing fact that the hon. the Law Member, who is known for his liberal and broad views, should say that he will not hold out the assurance that Muhammadans will be engaged, or that the 60 years' rule will be enforced. If I have misunderstood his statement, I withdraw my remarks. The Muhammadans feel strongly on the point. There are a number of capable Muhammadan vakils, barristers and lawyers all over the Presidency. The Collectors and District Judges are transferred from district to district every three years. If my Friend Mr. Satyamurti should go to Madura or elsewhere, the police at once go to him and watch him, however clever he may be. Even if he be a leading lawyer, when he is passing by, the police get upset. The result is the Collectors are governed more by their Sarishtadars or by the police officers, and so the appointment of public prosecutors. . . .”

Mr. E. W. LEGH :—“ I should protest, on behalf of the Revenue Department, Sir, against the statement that Collectors are governed by the police.”

Mr. ABBAS ALI KHAN :—“ Very often, Sir, prosecutions are launched with the connivance of Collectors. The hon. Member himself, having been a Collector, must have given sanction for so many prosecutions. I have seen in my own practical experience that it is very difficult for Muhammadans to get these appointments if they are not in the good graces of the local authorities. I would, therefore, request the hon. the Law Member to give us an assurance that he is going to circularize on the matter. After all what we ask for is a very small thing. When a man is 60 years old, he may be discontinued as a public prosecutor. Even then he can practise privately if he wants. In this way an opportunity may be given to the Muhammadans also to get these appointments. They have got the stamina, the grit and the legal acumen as much as others. Supposing Sir Muhammad Habib-ul-lah was not appointed as an Executive Councillor on the ground that he is not a Barrister, or a B.A., B.L., then we would have lost his services. Everybody knows that Sir Muhammad Habib-ul-lah, even though he may not have all the qualifications, is yet a valuable acquisition to this House.”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Hear, hear.”

Mr. ABBAS ALI KHAN :—“ I therefore say that because he was given an opportunity, he has shown to the world what stuff he is made of. Why should Muhammadans be denied the opportunity of showing that they are also equal to the task? I am very sorry, Sir, if I have introduced any heat into this debate in spite of myself, and I withdraw the Resolution on the assurance of the hon. the Law Member.”

The Resolution was by leave withdrawn.